In re Patent Application of:
KLOTZ ET AL.
Serial No. **10/661,901**
Confirm No. **8990**
Filed: **09/12/2003**   /

REMARKS

In the drawings

Drawings 7-12 are removed since the Office Action indicates that these drawings are not clearly legible.

In the specification

Applicant would like to thank the examiner for the detailed explanation of regulations related to claiming priority from a previously filed application.

In this case, a reference to the prior application was submitted in the Declaration filed on September 12, 2003, and was recognized by the Office as shown by its inclusion on the first filing receipt.   Accordingly, a petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required.

With this response, Applicant includes the priority claim into the specification.

The specification has been amended to remove references to deleted drawings.

In the claims

Claims 1-15 and 17-21 are pending

Claim 15 has been amended to replace he expression "a topology of the network" with the expression "a network topology" as advised by the examiner.

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Claims 7, 8, and 15 have been amended in response to the claim objection and claim rejection under 35 USC §112 presented in the Office Action.

<u>Claim rejection under 35 USC §103</u>

Claims 1-15 and 17-21 are rejected as obvious over

    U.S. Patent No. 5,850,388 in the name of Anderson et al.,

    U.S. Patent No. 7,173,943 in the name of Borchew et al., and

    U.S. Patent Appl. No. 20020161883 in the name of Matheny et al.

Independent <u>claims 1 and 15</u> recite an extrapolation step: "to extrapolate indicators of network elements" and "extrapolating network device presence indicators," respectively. The Office Action alleges that this step is disclosed in lines 56-62, col. 11 of Anderson:

> "The step 411 determines whether there is an entry corresponding to the source address of the frame in the station list array. If the source station has previously received or sent any frames during the network monitoring session, there will be an entry corresponding to the source station's address in the station list array."

The passage above refers to a search ("determines whether there is an entry") and expected results ("there will be an entry"), whereas "extrapolation is the process of constructing new data points outside a discrete set of known data points" (http://en.wikipedia.org/wiki/Extrapolation). In other words, extrapolation is prediction and not search. Accordingly, <u>the recited passage does not teach the essential extrapolation step of claims 1 and 15.</u> No teaching of extrapolation process has been found in the cited documents. Thus, claims 1 and 15 are believed to be patentable. Claims 2-6 and 17-21, dependent on claims 1 or 15, are believed to be patentable for at least the same reason as claims 1 and 15.

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Independent <u>claim 7</u> recites "capturing trace data from a first and second channel on each of the analyzers." The Office Action refers to network analyzer of Anderson receiving multiple data frames and equates frames to channels. A person skilled in the art would clearly distinguish between a data frame and a channel. Overly simplified for illustration purposes, a communication channel may be envisioned as a link between two computers and data frames as small pieces of data; multiple frames may follow one another over a single communication channel. Accordingly, <u>Anderson fails to teach the essential step of "capturing trace data from a first and second channel on each of the analyzers</u>."

Further, claim 7 recites "determining a first topology" and "determining a second topology." The Office Action alleges that Anderson teaches these steps in lines 50-53 and 60-65, col. 10:

> "As station-level statistics for each station operating on the network are calculated, they are stored in an array called the "station list array" in the memory of the protocol analyzer instrument. An array is a data structure used to store data....
> The station list array contains: the station address, traffic statistics (bytes received, bytes transmitted frames received, and frames transmitted, etc.), and error statistics for each station which is or has been active on the network during the network monitoring session. The type of error statistics calculated will vary depending on the type of network."

The Office Action equates determining a topology with calculating statistics. It would be appreciated by a person skilled in the art that "topology" and "statistics" are two different terms. "Network topology is the physical interconnections of the elements" (http://en.wikipedia.org/wiki/Network_topology); exemplary topologies are a ring, star, etc. Quite differently, statistics includes "number of bytes transmitted, number of frames transmitted, number of bytes received, number of frames received, and total number of errors generated by

that station" (lines 43-48, col. 10, Anderson). Accordingly, <u>Anderson fails to teach the steps of defining the first and second topology.</u> Therefore, claim 7 is believed to be patentable. Claims 8-14 dependent thereon are believed to be patentable for at least the same reason as claim 7.

Withdrawal of claim rejection under 35 USC §103 is respectfully requested.

<u>Conclusion</u>

Applicant amended the specification, drawings, and claims as requested by the examiner. It has been shown that the primary reference, Anderson, fails to teach essential features of each independent claim. Accordingly the claims are believed to be patentable. Allowance of the application is respectfully requested.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. **50-1465** and please credit any excess fees to such deposit account.

Respectfully submitted,

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